

Filed for intro on 02/02/95
House Bill _____
By _____

Senate No. SB1388
By Gilbert

AN ACT to amend Tennessee Code Annotated, Title 55, Chapter 10, Part 4, relative to testing operators' of motor vehicles for drugs or alcohol.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 55-10-406, is amended by deleting the section in its entirety and substituting instead the following

(a) Any person who drives any motor vehicle in the state of Tennessee shall be deemed to have given consent to a test for the purpose of determining the alcoholic or drug content of that person's blood; provided, that such test is administered at the direction of a law enforcement officer having reasonable grounds to believe such person to have been driving while under the influence of an intoxicant or drug, as defined in § 55-10-405. Any physician, registered nurse, licensed practical nurse, clinical laboratory technician, licensed paramedic or, notwithstanding any other provision of law to the contrary, licensed emergency medical technician approved to establish intravenous catheters, or in counties with a population of not less than seventy-four thousand five hundred (74,500) nor more than seventy-four thousand six hundred (74,600) according to the 1980 federal census or any subsequent federal census so listed, a qualified

phlebotomist who, acting at the written request of a law enforcement officer, withdraws blood from a person for the purpose of making such test, shall not incur any civil or criminal liability as a result of the withdrawing of such blood, except for any damages that may result from the negligence of the person so withdrawing. Neither shall the hospital nor other employer of the previously listed health care professionals incur, except for negligence, any civil or criminal liability as a result of the act of withdrawing blood from any person.

(b) Any law enforcement officer who requests that the driver of a motor vehicle submit to a test pursuant to this section for the purpose of determining the alcoholic or drug content of the driver's blood shall, prior to conducting such test, advise the driver that refusal to submit to such test will result in the immediate seizure of the driver's operator's license and the suspension of such license by the department of safety. The department of safety shall not have the authority to suspend the license of a driver who refused to submit to the test if such driver was not advised of the consequences of such a refusal.

(c) If such person having been placed under arrest and thereafter having been requested by a law enforcement officer to submit to such test and advised of the consequences for refusing to do so, refuses to submit, the test shall not be given, the officer shall immediately seize such person's operator's license and such person shall be charged with violating this section.

(d) Upon seizing such license, the officer shall give the person a receipt titled "Notice of Operator's License Seizure". Such receipt shall be signed by the person refusing to submit to the test and shall contain the following:

(1) A statement explaining that the receipt may be used as a temporary operator's license for a period of thirty (30) days;

(2) The date the license was seized and the date the notice of seizure was given to the person;

(3) The reason the seizing officer believes the license is subject to seizure;

(4) A statement that the person has been informed of the consequences of refusing to submit to such test;

(5) The procedure by which recovery of the license may be sought, including any time periods during which a request for hearing must be submitted; and

(6) The consequences that will attach if no request for hearing is filed within the applicable time period.

(e) The seizing officer shall give one (1) copy of the notice of seizure to the person whose license is seized, immediately send one (1) copy of such notice and the seized operator's license to the department of safety and keep one (1) copy for the officer's records.

(f) The notice of seizure shall serve as a temporary operator's license for a period of thirty (30) days from the date of seizure. If the person contests the seizure of his or her operator's license as provided in subsection (g) of this section, the department shall send the person verification of receipt of request for hearing and such verification, together with the notice of seizure, shall serve as a temporary operator's license for such person until a decision is rendered following the hearing.

(g)

(1) Any person contesting a license seized pursuant to this section, shall, within thirty (30) days of the date of seizure, file with the department of safety a written request for hearing. Such requests may be on forms provided by the department.

(2), With the request for hearing, such person shall also file a cash bond or attorney or corporate surety bond in the sum of three hundred fifty dollars (\$350), such bond being made payable to the state of Tennessee.

(3) An indigent person may file a request for hearing in forma pauperis by filing with the request an affidavit stating that such person is unable to bear the cost of the proceeding.

(4) If a request for hearing is not filed with the department of safety within the time specified by this subsection, the license shall be suspended as provided in subsection (j) of this section.

(h)

(1) Within thirty (30) days from the day the request for hearing is filed, the department shall establish a hearing date and set such case on the docket.

(2) Nothing in this section shall be construed as requiring the hearing to be conducted within such thirty-day period.

(i)

(1) The commissioner of safety is authorized to appoint or designate a hearing officer to sit, and set such case on the docket. The department may also contract with the secretary of state for use of administrative law judges to conduct such license seizure hearings or the commissioner may conduct such hearings.

(2) The hearing officer or administrative judge is empowered to subpoena witnesses and compel their attendance and to produce records, memoranda, papers and other documents at any hearing authorized by this part.

(3) At all hearings conducted pursuant to this section, the department shall provide a stenographer or court reporter to take a stenographic record of the evidence adduced at the hearing. Upon application, the person requesting the hearing shall be entitled to a copy of the stenographic record upon payment of the reasonable costs thereof to be fixed by the commissioner of safety.

(4) All hearings conducted pursuant to this section shall be contested case hearings and shall be conducted pursuant to the Uniform Administrative Procedures Act, compiled in Tennessee Code Annotated, Title 4, Chapter 5.

(j)

(1) In order to find that a person's operator's license should be suspended for a violation of this section, the state must prove at the hearing by a preponderance of the evidence that:

(A) The person refused to submit to a test for the purpose of determining the alcoholic or drug content of such person's blood when requested to do so; and

(B) The person was informed of the consequences of refusing to submit to such a test.

(2) If the hearing officer finds that the state has failed to carry the burden of proof, the officer shall order that the license be immediately returned to the person from whom it was seized.

(3) If the hearing officer finds that the driver violated the provisions of this section, the driver shall not be considered to have committed a criminal offense but the department of safety shall suspend the license of such driver for a period of six (6) months.

(k)

(1) The person whose operator's license is suspended because of a violation of this section may seek judicial review of such suspension decision by filing a written notice of review.

(2) An appeal under this section shall be conducted in the same manner as is provided in § 4-5-322, for a contested case hearing under the Uniform Administrative Procedures Act.

(3) A notice of review may, at the election of the aggrieved party, be filed in the circuit court or chancery court of Davidson County.

(4) Such person's operator's license shall remain suspended during the pendency of such appeal.

(l) Any person who is unconscious as a result of an accident or is unconscious at the time of arrest or apprehension or otherwise in a condition rendering that person incapable of refusal, shall be subjected to the test as provided for by §§ 55-10-405 - 55-10-412, but the results thereof shall not be used in evidence against that person in any court or before any regulatory body without the consent of the person so tested. Such person's refusal to release the evidence so obtained shall result in the suspension of that person's driver's license, thus such refusal of consent shall give such person the same right to request a hearing as is provided for conscious and capable persons by this section.

(m) A person whose license has been suspended by the department of safety under this section may apply to any general sessions court, circuit court, criminal court judge, or any chancellor in the county of the person's residence for a restricted license. The judge of the court wherein the application is made may order the issuance of a restricted license allowing the person to operate a motor vehicle for the purpose of going to and from and working at the person's regular place of employment. Such order shall state with all practicable specificity the necessary time and places of permissible operation of a motor vehicle. The person may obtain a certified copy of the order, and within ten (10) days after it is issued, present it, along with an application fee of twenty dollars (\$20.00), to the department of safety, which shall forthwith issue a restricted license embodying the limitations imposed in the order. After proper application and until such time as the restricted license is issued, a certified copy of the order may serve in lieu of a motor vehicle operator's license. Any restricted license issued under the

provisions of this section shall be subject to renewal in the same manner as other motor vehicle operator's licenses.

(n) Nothing in this section shall affect the admissibility in evidence, in criminal prosecutions for aggravated assault or homicide by the use of a motor vehicle only, of any chemical analysis of the alcoholic or drug content of the defendant's blood which has been obtained by any lawful means without regard to the provisions of this section.

SECTION 2. This act shall take effect July 1, 1995, the public welfare requiring it and shall apply to all persons refusing to submit to such tests on or after such date.

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